

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PATTIVA McKEAN,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 06-526-KAJ
)	
NORFOLK SOUTHERN RAILWAY)	
COMPANY, a Virginia corporation,)	
)	
Defendant.)	

ANSWER OF NORFOLK SOUTHERN RAILWAY COMPANY

Defendant Norfolk Southern Railway Company ("Norfolk Southern") hereby answers plaintiff Pattiva McKean's ("Plaintiff") Complaint as follows:

1. Norfolk Southern is without knowledge or information sufficient to admit or deny the allegations of this paragraph.

2. Admitted.

3. Denied to the extent the allegations of this paragraph relate to causation or call for a response to a legal conclusion. The remaining allegations of this paragraph are admitted.

4. Denied.

a. Denied.

b. Denied.

c. This paragraph assumes a precondition that Norfolk Southern has previously denied, and, as such, the allegations of this paragraph are denied.

d. Denied.

e. Denied to the extent the allegations of this paragraph relate to causation or call for a response to a legal conclusion. By way of further response, this

paragraph assumes a precondition that Norfolk Southern has previously denied, and, as such, the remaining allegations of this paragraph are denied.

f. Denied to the extent the allegations of this paragraph relate to causation or call for a response to a legal conclusion. By way of further response, the remaining allegations of this paragraph are denied.

g. Denied to the extent the allegations of this paragraph relate to causation or call for a response to a legal conclusion. By way of further response, this paragraph assumes a precondition that Norfolk Southern has previously denied, and, as such, the remaining allegations of this paragraph are denied.

h. Denied to the extent the allegations of this paragraph relate to causation or call for a response to a legal conclusion. By way of further response, this paragraph assumes a precondition that Norfolk Southern denies, and, as such, the remaining allegations of this paragraph are denied.

5. Denied to the extent the allegations of this paragraph relate to causation or call for a response to a legal conclusion. Norfolk Southern is without knowledge or information sufficient to admit or deny the remaining allegations of this paragraph.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff was contributorily negligent to an extent greater than 50% and consequently the claims of the plaintiffs are barred.

Plaintiff was contributorily negligent in that she:

- a. Failed to respond to a functioning set of crossing protection;
- b. Failed to maintain a proper lookout; and
- c. Failed to maintain proper control over her vehicle.

THIRD AFFIRMATIVE DEFENSE

Plaintiff was operating her vehicle in a careless and/or reckless manner.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff was operating her vehicle at a speed in excess of the posted speed limit.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be preempted by applicable state and federal laws.

WHEREFORE, Norfolk Southern demands that the Complaint be dismissed with Plaintiff to pay costs.

POTTER ANDERSON & CORROON LLP

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Dated: September 22, 2006
748462 / 30577

Counsel for Defendant
Norfolk Southern Railway Company

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on September 22, 2006, the attached document was sent by electronic mail and U.S. Mail to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading:

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